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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

NCUA-2021-0037

RIN: 3133-AF15

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: In response to the enactment of the Consolidated Appropriations Act, 2021, (CAA) the NCUA Board (Board) is issuing this interim final rule to cohere the NCUA's regulations to the statutory changes made by the CAA. Specifically, the CAA extended several enhancements to the NCUA's Central Liquidity Facility (CLF or Facility), which were first enacted by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This rule amends the NCUA's CLF regulation to reflect these extensions. This rule also extends the withdrawal from CLF membership provisions that the Board included in the April 2020 interim final rule that made the aforementioned regulatory changes related to the CARES Act.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The amendment to § 725.6 at instruction number 4 is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until January 1, 2023. Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF15, by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Interim Final Rule: CLF 2021 - NCUA-2021-0037 ” in the transmittal.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-

6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Anthony Cappetta, CLF Vice President, Office of Examination and Insurance; or Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Anthony Cappetta can also be reached at (703) 518-1592, and Justin Anderson can be reached at (703) 518-6556.

SUPPLEMENTARY INFORMATION:

I. Background

The CARES Act made several changes to Title III of the Federal Credit Union Act (the FCU Act),¹ which governs the CLF.² On April 16, 2020, the Board approved an interim final rule to amend the NCUA's CLF regulation, Part 725.³ This interim final rule made several changes to part 725, some of which effectuated or mirrored the changes made by the CARES Act. Other changes, made in the April interim final rule, were intended to make membership in the CLF more advantageous to credit unions.

The changes directly related to the CARES Act were scheduled to sunset in accordance with the same on December 31, 2020. As noted above, however, the CAA, among other things, extended the sunset date of the CLF enhancements in the CARES

¹ 12 U.S.C. 1795 *et. seq.*

² *Coronavirus Aid, Relief, and Economic Security Act*, Pub. L. 116–136, 134 Stat 281 (March 27, 2020).

³ 85 FR 23731 (Apr. 29, 2020).

Act to December 31, 2021.⁴ To provide clarity and transparency, the Board is issuing this interim final rule to amend its regulations to reflect this extension.

In addition, the Board notes that in response to the April interim final rule, the Board received five comments which supported the rule. The comments also requested legislative changes and/or changes outside the scope of the April interim final rule.

II. Amendments

The following is a section-by-section analysis of the changes in this interim final rule.

Part 725

A. Definitions

In accordance with the CARES Act, the Board amended the definition of “Liquidity needs” to remove the words “primarily serving natural persons.” This change mirrored the statutory change in the CARES Act and clarified that liquidity needs are not limited to only natural person credit unions, but may also include those of corporate credit unions or a corporate credit union group. This amendment was scheduled to sunset in accordance with the CARES Act on December 31, 2020. The CAA extended this provision in the CARES Act until December 31, 2021.⁵ As such, the Board is clarifying that the regulatory definition of “Liquidity needs” to make it clear when the definition

⁴ *Consolidated Appropriations Act, 2021*, Pub. L. 116-260, 134 Stat 1182 (December 27, 2020).

⁵ *Consolidated Appropriations Act, 2021*, Pub. L. 116-260, 134 Stat 1182, section 540(a) (December 27, 2020).

under the CARES Act applies and when such definition reverts back to the pre-CARES Act version.

B. Agent membership

In accordance with the CARES Act, the Board amended the nature of the requirement for a corporate credit union or group of corporate credit unions to subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and unimpaired capital and surplus of all of the corporate credit union's or corporate credit union group's natural person credit union members. This change, which mirrors the statutory change in the CARES Act, allows the Board, in its sole discretion, to determine which grouping of natural person member credit unions of the applying corporate credit union or corporate credit union group are considered covered by the Agent's membership in the Facility. In turn, this approved group is the basis for calculating the amount of Facility capital stock the corporate credit union or corporate credit union group is required to purchase. This amendment was scheduled to sunset in accordance with the CARES Act on December 31, 2020. The CAA extended this provision in the CARES Act until December 31, 2021.⁶ As such, the Board is making a conforming date change to part 725 through this interim final rule.

Upon the sunset of the amendment made in the CARES Act, as extended by the CAA, any corporate credit union or corporate credit union group that became an agent member under this provision must, within one year from the sunset date, either:

⁶ Id.

1. purchase Facility stock for all of its member credit unions; or
2. terminate its membership in the Facility.

The Board notes that these are the options that the Board included in the April interim final rule. Further, the Board is, as noted above, only changing the sunset date, and not making any substantive changes to this or other sections of part 725.

C. Agent member borrowing

To effectuate the intent of the CARES Act in a safe and sound manner, the Board, in the April interim final rule, made a clarifying amendment to § 725.4.⁷ This amendment clarified that an agent member may borrow from the Facility for its own liquidity needs, but, to do so, such agent must first subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the Agent's own paid-in and unimpaired capital and surplus.⁸ In addition, the Board amended § 725.17(b)(2) to clarify that an agent may apply for a Facility advance based on its own liquidity needs.

The Board notes that the foregoing amendments were scheduled to sunset in accordance with requirements of the CARES Act on December 31, 2020. The CAA

⁷ 85 FR 23731 (Apr. 29, 2020).

⁸ A credit union is required to pay into the Facility one-half of the amount required by the regulations and to hold the other one-half in liquid assets on its balance sheet.

extended the related provisions in the CARES Act until December 31, 2021.⁹ As such, the Board is making a conforming date changes through this interim final rule.

The April interim final rule included language to clarify the ramifications of the sunset of this provision. Specifically, the April interim final rule provided that upon sunset of this provision, an agent must:

- (1) not request any additional Facility advances for its own liquidity needs; and
- (2) continue to follow the terms of the Facility advance agreement entered into between the agent and the Facility.

The Board is not making any changes to the aforementioned provisions, which will still apply upon the sunset of the changes to these sections of part 725.

In addition, in the April 2020 interim final rule, the Board made cohering changes to §§ 725.17 and 725.18 to include the ability of an Agent to borrow for its own liquidity needs.¹⁰ This rule makes technical changes to the two aforementioned sections to clarify that the references to an Agent borrowing for its own liquidity needs sunset on December 31, 2021.

D. Termination of Membership

⁹ *Consolidated Appropriations Act, 2021*, Pub. L. 116-260, 134 Stat 1182, section 540(a) (December 27, 2020).

¹⁰ 85 FR 23731 (Apr. 29, 2020).

In the April interim final rule, the Board amended the waiting periods for a credit union to terminate its membership in the Facility between the effective date of the interim final rule and January 1, 2022.¹¹ The amendments to this section of part 725 temporarily permitted a credit union, regardless of its percentage amount of stock subscription, to withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(A) Six months from the date of its written notice to the NCUA Board; or

(B) December 31, 2020.

Further, any credit union that remained a member after December 31, 2020, was permitted to withdraw from membership immediately upon notifying the Board in writing of its intent to do so. Per the April interim final rule, such immediate withdrawal period would expire on December 31, 2021. After December 31, 2021, the termination requirements in effect prior to the enactment of the CARES Act would be reinstated and apply to all members.¹²

The Board is making several conforming amendments to this section to address the extension of the CLF provisions in the CARES Act by the CAA. First, any credit union that joined the CLF between April 29, 2020 and December 31, 2020 may immediately withdraw from membership upon notifying the Board in writing of its intent

¹¹ Id.

¹² Id.

to do so. Through this interim final rule, the Board is extending this immediate withdrawal period to December 31, 2022.

Second, credit unions that join the CLF between January 1, 2021 and December 31, 2021, regardless of percentage amount of stock subscription, may withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(A) Six months from the date of its written notice to the NCUA Board; or

(B) December 31, 2021.

Any credit union that joins the Facility during the aforementioned period and remains a member after December 31, 2021, may immediately withdraw from membership in the Facility upon notifying the Board in writing of its intent to do so. Such immediate withdrawal period will expire on December 31, 2022. On January 1, 2023, the immediate withdrawal period will cease, and all members will be subject to the termination provisions in effect before April 29, 2020.

E. CARES Act provisions extended by the CAA but not included in this interim final rule.

The Board notes that the CARES Act included two additional amendments to the FCU Act that were not reflected in the April interim final rule. Like the other changes discussed above, the CAA also extended these amendments until December 31, 2021.¹³

¹³ *Consolidated Appropriations Act, 2021*, Pub. L. 116-260, 134 Stat 1182, section 540(a) (December 27, 2020).

For the benefit and information of stakeholders, the Board briefly discusses these amendments below.

First, the CARES Act temporarily increased the multiplier from “twelve times” to “sixteen times.” This means that for every \$1 of capital and surplus, the Facility may borrow \$16. This provision was not previously codified in part 725, and therefore the Board is not making any regulatory amendment regarding this temporary statutory change.

Second, the CARES Act provided more clarity about the purposes for which the NCUA Board can approve liquidity-need requests by removing the phrase “the Board shall not approve an application for credit the intent of which is to expand credit union portfolios.”¹⁴ This provision was not previously codified in part 725, and therefore the Board is not making any regulatory amendment regarding this temporary statutory change.

III. Regulatory Procedures

A. Administrative Procedure Act

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a

¹⁴ See. 12 U.S.C. 1795e(a)(1).

brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the *Federal Register*. As discussed above, the Board notes the changes in this rule cohere the NCUA’s regulations with statutory extensions recently enacted in the CAA. As such changes are clarifying in nature and will reduce any disruption caused by inconsistency in the NCUA’s regulations, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best of interests of the public and the federally insured credit unions that serve that public.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause. Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement. The reasons previously discussed for forgoing prior notice and comment would also separately justify this determination.

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is

interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule. If a rule is deemed a “major rule” by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

For the same reasons set forth above, the Board is adopting this interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In light of current inconsistency between the NCUA’s regulations and the Act, the Board

believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review. The Board notes that OMB agreed that the April interim final rule was not major. As this interim final is similar in nature, the Board believe this rule is also not major for purposes of the Congressional Review Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number.

In accordance with the PRA, the information collection requirements included in this interim final rule extension have been submitted to OMB for approval under control number 3133-0061.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This interim final rule does not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest.¹⁵ Accordingly, the NCUA is not required to conduct a regulatory flexibility analysis for the reasons stated above relating to the good cause exemption. Nevertheless, the Board welcomes comments on the effect this interim final rule may have on small entities.

List of Subjects in 12 CFR Part 725

Credit unions, Reporting and recordkeeping requirements

By the NCUA Board on March 18, 2021.

Melane Conyers-Ausbrooks
Secretary of the Board

For the reasons discussed in the preamble, the Board is amending 12 CFR part 725 as follows:

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

1. The authority citation for part 725 continues to read as follows:

Authority: 12 U.S.C. 1795f(a)(2).

¹⁵ 5 U.S.C. 553(a).

2. In § 725.2, revise paragraph (i) to read as follows:

§ 725.2 Definitions.

* * * * *

(i) *Liquidity needs* means:

(1) From April 29, 2020 to December 31, 2021, the needs of credit unions for:

(i) Short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(ii) Seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(iii) Protracted adjustment credit available in the event of unusual or emergency circumstances of a longer-term nature resulting from national, regional or local difficulties.

(2) After December 31, 2021, the needs of credit unions primarily serving natural persons for:

(i) Short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(ii) Seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(iii) Protracted adjustment credit available in the event of unusual or emergency circumstances of a longer-term nature resulting from national, regional or local difficulties.

* * * * *

3. In § 725.4, revise paragraphs (a)(2)(ii) and (iii) to read as follows:

§ 725.4 Agent membership.

(a) * * *

(2) * * *

(ii) From April 29, 2020, until December 31, 2021, one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with §725.5(b) of this part) of such credit union members of the corporate credit union or corporate credit union group as the Board may determine in its sole discretion, except those which are Regular members of the Facility or which have access to the Facility through, and are

included in the stock subscription of, another Agent (a natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription). Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility. A corporate credit union or corporate credit union group that became an Agent member of the Facility under this paragraph shall, after December 31, 2021, but before January 1, 2023, either:

(A) Purchase Facility stock in accordance with the terms of paragraph (a)(2)(i) of this section; or

(B) Terminate its membership in the facility.

(iii) From April 29, 2020, until December 31, 2021, if borrowing for its own liquidity needs, one-half of 1 percent of the Agent's own paid-in and unimpaired capital and surplus. Upon approval of the application, the Agent shall forward funds equal to one-half of this stock subscription to the Facility. This amount shall be in addition to the amounts required by paragraph (a)(2)(i) or (ii) of this section, if a corporate credit union or corporate credit union group joined the facility as an Agent and intends to borrow for its own liquidity needs. Any corporate credit union or corporate credit union group that received a Facility advance for its own liquidity need under the temporary requirements set forth in this paragraph must, as of January 1, 2022 and thereafter:

(A) Not request any additional Facility advances for its own liquidity needs; and

(B) Continue to follow the terms of the Facility advance agreement entered into between the Agent and the Facility.

* * * * *

§ 725.6 [Amended]

4. In § 725.6, effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until January 1, 2023, paragraphs (a) and (b) are stayed.

5. In § 725.6, revise paragraph (e) to read as follows:

§725.6 Termination of membership.

* * * * *

(e) The following requirements apply to a credit union's termination of membership in the Facility from April 29, 2020 until January 1, 2023:

(1) Any credit union, regardless of its amount of stock subscription, that became a member of the Facility between April 29, 2020, and December 31, 2020, may immediately terminate its membership until December 31, 2022.

(2) Any credit union regardless of its amount of stock subscription, that becomes a member between January 1, 2021 and December 31, 2021, may withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(A) Six months from the date of its written notice to the NCUA Board; or

(B) December 31, 2021.

(3) Any credit union that does not elect to withdraw from membership in the Facility during the time periods prescribed in paragraph (e)(2) of this section, may immediately withdraw from membership in the Facility after notifying the NCUA Board in writing of its intention to do so from January 1, 2022 to December 31, 2022. As of January 1, 2023, the requirements of paragraphs (a) and (b) of this section, as in effect on March 1, 2020, shall apply.

(4) The Facility will process requests under this paragraph (e) upon demand and deliver funds as soon as practicable, allowing for the time necessary for settlement and transfer of funds in these transactions.

6. In § 725.17, revise paragraph (b)(2)(iv) to read as follows:

§725.17 Applications for extensions of credit.

* * * * *

(b) * * *

(2) * * *

(iv) For the period beginning April 29, 2020, and ending on December 31, 2021, the applicant Agent's own liquidity needs. After the aforementioned period, an Agent is prohibited from submitting an application for an extension for its own liquidity needs.

* * * * *

7. In § 725.18, revise paragraphs (a) and (d) to read as follows:

§725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance or an Agent member for a Facility advance for such Agent member's own need (provided such Agent may submit an application under § 725.17(b)(2)(iv) of this part), the Facility shall consider the creditworthiness of such member.

* * * * *

(d) A credit union (whether a Regular member of the Facility, Agent member (provided such Agent may submit an application under § 725.17(b)(2)(iv) of this part), or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.